

Decision 91 03 036 MAR 22 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tut Hayes,

Complainant,

vs.

Southern California Edison,

Defendant.

Case 89-09-032
(Filed September 21, 1989)

ORIGINAL

OPINION

Background

On May 10, 1989 we issued Decision (D.) 89-05-012 in Case (C.) 88-10-057 resolving a billing dispute between Tut Hayes (Hayes) and Southern California Edison (SCE) over Hayes' unauthorized electric usage.

In summary, these are the facts of the previous case. Hayes moved into a commercial building where electric service was still connected after the prior tenant, a restaurant, had moved. Hayes did not apply for electric service in his name. SCE considered the electric meter on the premises as an idle meter. Since the electric meter was located inside the building, usage was not easily detectible. Idle meters are only checked periodically. From October 16, 1985 to February 10, 1988, Hayes occupied space in the building and received electric service.

In July, 1988 while performing a routine check on idle meters, SCE discovered that Hayes occupied space in the building. Hayes admitted that he moved in October 16, 1985 and believed the electric usage was included in his rent. However, no evidence substantiating this claim was produced at the evidentiary hearing. SCE informed Hayes that he must contract with SCE for service. Hayes complied with this request on February 11, 1988. SCE also

informed Hayes that he must pay for the service he had already received. SCE billed Hayes from October 16, 1985 to February 10, 1988 at the commercial rate. Hayes did not pay the bill. He argued that since he was not a customer of SCE until February 11, 1988 he was not liable for charges before this date.

Upon non-payment of the bill, SCE disconnected Hayes' service after a 5-day notice, which is the required notice for commercial accounts. However, the service was reconnected after two days at the request of our Commission Consumer Affairs Division.

In D.89-05-012, we concluded that Hayes was liable for his unauthorized use for the period billed, \$789.63, but that SCE had not given a proper 15-day notice for a residential account before disconnecting Hayes' service. We rejected Hayes argument that he was not an SCE customer during the billing period because he never applied for electric service. We agreed that Hayes' liability stemmed from the receipt of service under SCE's tariff for unauthorized usage. We ordered SCE to reclassify Hayes' account from commercial to residential, rebill Hayes for the additional charges resulting from this reclassification, credit his account for the \$150 on deposit with the Commission and offer Hayes a 12-month payment plan for the total amount due.

Our decision in the previous complaint was rendered in May, 1989. On August 18, 1989, the Commission Consumer Affairs Branch responded to Hayes' informal complaint regarding the 12-month payment plan, the lack of a remedy for SCE's improper notice, and the accuracy of the rebilling. This informal complaint led to the present proceeding.

The Present Complaint and Answer

Hayes complains that the bill recalculated by SCE was for an improper billing period and that his service has been unlawfully disconnected. Hayes also complains that SCE refuses to provide accounting statements for the amounts in the recalculated bill.

Hayes requests that his billing be in accordance with Rule 11B in SCE's tariff, that is, for a period of three months. Hayes also requests that appropriate deposits and adjustments be credited to his account and that the 12-month payment agreement "be joint, not unilateral."

SCE answers that Hayes' liability for the billing period and the method of recalculation was established by this Commission in the previous complaint decision, D.89-05-012. SCE contends Hayes was properly notified of the bill since copies of the corrected bill were mailed to his residence and other notices were either mailed to the service address, hand delivered to the service address or to Hayes personally.

SCE asserts that it has complied with the Commission's order in D.89-05-012 to offer Hayes a 12-month payment plan for additional charges authorized to be billed. SCE contends that Hayes refused to pay the monthly installments and subsequently his service was lawfully disconnected.

Evidentiary Hearings

Evidentiary hearings were held in Los Angeles on January 11 and 12, 1990. At that time, Hayes amended his complaint, with no objection from SCE, to add allegations that he had been wrongfully denied access to SCE tariffs two weeks prior to the hearing and that he had been prevented by SCE from properly asserting his inability to pay his bill. Accordingly, Hayes adds to his prayer for relief that SCE be ordered to post a notice in all offices that tariffs are available for inspection by a customer upon request. Hayes requests that he be hired to monitor compliance with this order.

Discussion

At the hearing, Hayes admitted that this complaint was mainly based upon his disagreement with the conclusion reached in D.89-05-012 that he is liable for electric usage from October 16, 1985 to February 10, 1988. Thus, in this proceeding Hayes seeks to

relitigate matters conclusively decided in our previous decision. This portion of Hayes' present complaint must be denied.. Hayes continues to be liable for unauthorized usage as decided in D.89-05-012.

There are three new issues raised in this proceeding:

1. The inability of Hayes to pay the recalculated charges;
2. The validity of the notice prior to the second termination of Hayes' service; and,
3. The legality of SCE's 12-month installment plan.

Hayes contends he was denied the opportunity to give notice in writing of his inability to pay. However, Hayes admits that he discussed his inability to pay on several occasions with SCE representatives. Based upon this testimony, we conclude that SCE was aware of Hayes' allegation that he could not pay the recalculated bill. However, Hayes also admits that in these conversations, SCE offered to arrange a 12-month payment plan and he rejected this offer by adhering to his contention that a bill beyond the three-month period was unlawful.

It appears that Hayes alleged the inability to pay, yet at the same time refused to pay any portion of the total bill because he considered the billing period unlawful.

SCE witnesses testified, and Hayes did not deny, that during several discussions of the recalculated bill, Hayes offered to pay for three months of the usage period billed. This testimony creates doubt of the validity of Hayes' allegation that he is unable to pay the monthly installments of \$44 under the 12-month payment plan.

Moreover, the inability to pay a utility bill does not relieve a customer from the obligation to pay the bill. Under SCE's tariff, once inability to pay is alleged, SCE must inform the customer of social programs able to assist with this financial

problem. Such notice of inability to pay a bill does not prevent the discontinuance of service should the bill remain unpaid. After Hayes alleged an inability to pay, SCE offered the payment plan which Hayes rejected. We believe SCE has met its obligation under its tariff. Therefore, Hayes' disconnect is not unlawful on these grounds.

Hayes asserts improper notice of the September 15th disconnection. Hayes testified that he received two disconnect notices. He criticized the legality of the first notice because the issuing date was blank and argued that the second notice was unlawful because it did not have an SCE telephone number. However, upon cross-examination by ALJ Bennett, Hayes testified that he received the two disconnect notices prior to termination, one on a date he could not remember and one on August 29, 1989. In addition, Hayes testified that his references to unlawful notice referred to the notices in the prior proceeding.

At best, Hayes' testimony regarding the notices prior to his disconnect is confusing and contradictory. Therefore, we cannot conclude that the disconnect notices in this proceeding are unlawful.

Hayes contends that the installment contract offered by SCE was unilateral and, therefore, unlawful. Hayes bases this claim on the fact that SCE omitted the word "lawful" from its contract terms and the fact that he did not sign the installment contract.

The contract under which we hold Hayes liable for payment is the implied contract created by his receipt of utility service for three years, which was the subject of the previous proceeding. The 12-month installment contract in this proceeding was a convenience we ordered to minimize the hardship of paying a large utility bill in one payment. SCE offered these payment arrangements; Hayes never accepted them. Hayes non-acceptance of the installment arrangement does not negate his liability to pay.

Nor is the contract unlawful because the terms do not expressly state that it is "lawful".

We find no merit to any of Hayes allegations to relieve him of the obligation to pay the bill tendered by SCE.

Hayes alleges he was denied the opportunity to review SCE tariffs. However, Hayes admits that he reviewed SCE tariffs two days after his request was made. SCE witness, Sumpter testified that SCE personnel were instructed to refer all of Hayes' complaints to Sumpter because he was most familiar with Hayes' account. At the time Hayes made the request, Sumpter was not in his office. A meeting with Hayes was arranged and Hayes subsequently reviewed SCE's tariffs.

Under the circumstances of numerous and continuous inquiries from Hayes, we find reasonable SCE's actions in response to Hayes' request to review SCE tariffs. Accordingly, an order for SCE to post notice that its tariffs may be reviewed is unnecessary. Hayes request to monitor this posting is also unnecessary.

Findings of Fact

1. Hayes alleges he does not owe the amount of \$803.59 which is the additional charge for utility service under a residential rate for the period October 16, 1985 to February 10, 1988.

2. Hayes' liability for this usage and the recalculated bill was ordered by this Commission in D.89-05-012, issued May 29, 1989. This issue should not be relitigated in this proceeding.

3. SCE has complied with our orders in D.89-05-012 by reclassifying Hayes' account as residential, giving credit for his \$150 deposit and rebilling for usage during the period October 16, 1985 to February 10, 1988.

4. Hayes received the recalculated bill. Hayes refused to pay the bill. Hayes rejected the offer to pay the bill in 12 monthly installments.

5. Hayes' service was subsequently disconnected.

6. Hayes' offer to SCE to pay for usage for a three-month period creates doubt of the validity of Hayes contention that he cannot pay the \$44 monthly installments offered by SCE.

7. Hayes testified that his reference to unlawful notices were references to notices in the prior proceeding. Hayes' testimony in this proceeding of notices prior to the September 5, 1990 disconnect is vague, contradictory, and confusing.

Conclusions of Law

1. Hayes liability for payment of unauthorized usage for the period October 16, 1988 to February 10, 1988 was conclusively decided in our prior decision, D.89-05-012.

2. Hayes' testimony of disconnect notices prior to the September 5, 1990 disconnect is insufficient upon which to conclude that the disconnect was unlawful.

3. This complaint should be denied.

ORDER

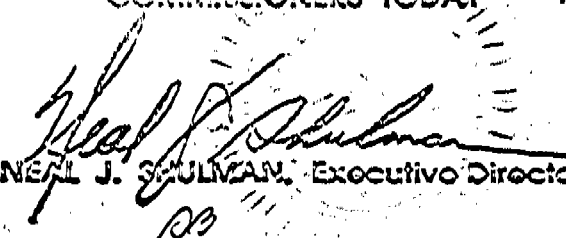
IT IS ORDERED that this complaint is denied with prejudice.

This order becomes effective 30 days from today.

Dated MAR 22 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL WM. FESSLER
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


NEAL J. SHULMAN, Executive Director